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CENTRAL DIST. OF CALIF.  
LOS ANGELES

BY \_\_\_\_\_

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individually and on behalf of other persons similarly situated

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

BENJAMIN GRANADOS, individually  
and on behalf of other persons similarly  
situated,

Plaintiff,

vs.

BIMBO BAKERIES USA, INC., and  
DOES 1 through 10,

Defendants.

Case No. **CV09 07329 CBM (FFM:x)**

**COMPLAINT FOR DAMAGES AND  
RESTITUTION**

**FLSA COLLECTIVE ACTION AND  
CALIFORNIA CLASS ACTION**

[28 U.S.C. § 1331]  
[28 U.S.C. § 1332(d)(2)]  
[29 U.S.C. §§ 201 *et seq.*]

**DEMAND FOR JURY TRIAL**

1 Plaintiff Benjamin Granados ("Plaintiff") on behalf of himself and all others  
2 similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. This case arises out of defendant Bimbo Bakeries USA, Inc.'s  
5 ("Defendant") policy, practice, custom, protocol, procedure, routine and/or rule of  
6 rounding its hourly paid employees' time resulting in Defendant's failure to pay such  
7 employees minimum and overtime wages, failure to provide accurate wage statements,  
8 and failure to timely pay its employees final wages upon their resignations or discharges  
9 within the time periods prescribed by the California Labor Code. For himself and other  
10 similarly situated current and former employees of Defendant, Plaintiff seeks damages  
11 and injunctive relief under the Fair Labor Standards Act for unpaid overtime, the  
12 California Labor Code for unpaid wages and failure to provide accurate wage statements,  
13 and restitution of owed and unpaid monies under Business and Professions Code §  
14 17203.

15 **VENUE**

16 2. Venue is proper in this Judicial district because work was performed by  
17 Plaintiff and other employees in this District and Defendants' obligations to Plaintiff and  
18 other employees in accordance with the Fair Labor Standards Act and the California  
19 Labor Code were breached in this District.

20 **JURISDICTION**

21 3. This Court has original federal question jurisdiction under 28 U.S.C.  
22 § 1331 because this case is brought under the Fair Labor Standards Act, 29 U.S.C.  
23 §§ 201, *et seq.* This Court has supplemental jurisdiction over the state law claims. The  
24 state law claims are so related to the claims in the action within such original jurisdiction  
25 that they form part of the same case or controversy under Article III of the United States  
26 Constitution.

27 //

1           4.     This Court also has jurisdiction over this class action pursuant to 28 U.S.C.  
2     § 1332(d)(2). The number of proposed Class members is more than 500, the matter in  
3     controversy, exclusive of interests and costs, exceeds the sum or value of \$5,000,000 and  
4     Plaintiff is a citizen of a state different than Defendant. At all times relevant to this  
5     action, Defendant has been a citizen of Delaware.

6                                   **THE PARTIES**

7           **A.     Plaintiff & Class Members**

8           5.     Plaintiff was employed by Defendant as an hourly paid bakery employee in  
9     Los Angeles County, California from October 29, 2006 through January 20, 2009.  
10    During his employment, Plaintiff regularly worked more time than he was paid for  
11    including time over 40 hours a week, yet Defendant failed to pay Plaintiff minimum  
12    wages for all hours worked and for all overtime hours worked. Specifically, Defendant  
13    had a policy, practice, custom, protocol, procedure, routine and/or rule of recording all of  
14    Plaintiff's work time, designating such time on payroll records as "Actual Time", but  
15    then "rounding" said time, most often down, so that during the course of his  
16    employment, Plaintiff was paid for less than he would have been paid had he been paid  
17    for "Actual Time" rather than rounded time. On January 20, 2009, Plaintiff was  
18    terminated, at which time Defendant did not pay him his final wages. The final payment  
19    Defendant made to Plaintiff did not take place until January 30, 2009. Defendant still  
20    has not paid all unpaid minimum and overtime wages owing to Plaintiff. Plaintiff did  
21    not receive accurate itemized wage statements including all statutory mandated  
22    information.

23          6.     Plaintiff seeks to represent similarly situated current and former employees  
24    of Defendants who, pursuant to Defendants' rounding policies and practices, like  
25    Plaintiff, were not paid minimum wages for all hours worked, were not paid overtime  
26    wages for all overtime worked, were not paid their final wages timely upon termination

27    //  
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1 of employment, and did not receive accurate itemized wage statements including all  
2 statutory mandated information.

3 **B. Defendants**

4 7. Defendant Bimbo Bakeries USA, Inc. is a Delaware corporation with its  
5 principal place of business in Texas. It does business in the Central District of  
6 California. Defendant is a major baker and distributor of food products in the United  
7 States. It operates numerous locations throughout the State of California and the United  
8 States. Defendant is the former employer of Plaintiff and the current and former  
9 employer of other Class members.

10 8. Plaintiff is informed and believes and thereon alleges that at all times  
11 relevant to this action the named Defendant Bimbo Bakeries USA, Inc. and Defendants  
12 DOES 1 through 10 ("DOE Defendants") were affiliated and were an integrated  
13 enterprise. Defendant Bimbo Bakeries USA, Inc. and the DOE Defendants are referred  
14 to collectively herein as "Defendants."

15 9. Plaintiff is unaware of the true names, capacities, relationships, and extent  
16 of participation in the conduct herein alleged of Defendant and the DOE Defendants, but  
17 is informed and believes and thereon alleges that said DOE Defendants are legally  
18 responsible for the wrongful conduct alleged herein and therefore sues these Defendants  
19 by such fictitious names. Plaintiff will amend this Complaint to allege the true names  
20 and capacities of the DOE Defendants when ascertained or when such facts pertaining to  
21 their liability are ascertained, or as permitted by law or by the Court.

22 10. Plaintiff is informed and believes and thereon alleges that each Defendant,  
23 directly or indirectly, or through agents or other persons employed Plaintiff and the other  
24 employees described in the Class definitions below, and exercised control over their  
25 wages, hours, and working conditions. Plaintiff is informed and believes and thereon  
26 alleges that, at all relevant times, each Defendant was the principal, agent, partner, joint  
27 venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent  
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1 corporation, successor in interest, and/or predecessor in interest of some or all of the  
 2 other Defendants, and was engaged with some or all of the other Defendants in a joint  
 3 enterprise for profit, and bore such other relationships to some or all of the other  
 4 Defendants so as to be liable for their conduct with respect to the matters alleged below.  
 5 Plaintiff is informed and believes and thereon alleges that each Defendant acted pursuant  
 6 to and within the scope of the relationships alleged above, that each Defendant knew or  
 7 should have known about, and authorized, ratified, adopted, approved, controlled, and  
 8 aided and abetted the conduct of all other Defendants.

### 9 10 **FLSA COLLECTIVE ACTION ALLEGATIONS**

11 11. Plaintiff brings the First Claim for Relief for violations of the Fair Labor  
 12 Standards Act ("FLSA") as a collective action pursuant to FLSA § 16(b), 29 U.S.C.  
 13 § 216(b). Plaintiff brings this FLSA collective action on behalf of all others similarly  
 14 situated who have been, are, or will be employed by Defendants in any hourly paid  
 15 position or positions at any of Defendants' facilities throughout the United States at any  
 16 time on or after October 8, 2006 (the "FLSA Period"), whose time records and pay  
 17 records as employees of Defendants reflect a policy of Defendants to pay such  
 18 employees on the basis of "rounded" time (the "FLSA Collective Plaintiffs").

19 12. At all relevant times, Plaintiff and the FLSA Collective Plaintiffs are and  
 20 have been similarly situated, and have been subject to the same rounding and pay  
 21 practices, procedures, protocols and plans. Defendants willfully rounded hours, and in  
 22 doing so, did not properly pay Plaintiff at the legally required time and-one-half rates for  
 23 work in excess of forty (40) hours per workweek. Plaintiff's claims as stated herein are  
 24 similar to those of members of the FLSA Collective Plaintiffs.

25 13. The First Claim for Relief is properly brought and maintained as an opt-in  
 26 collective action pursuant to § 16(b) of the FLSA, 29 U.S.C. § 216(b). For purposes of  
 27 notice and other purposes related to this action, the names and addresses of the FLSA  
 28

1 Collective Plaintiffs are readily available from Defendants. Notice can be provided to  
 2 the FLSA Collective Plaintiffs via first class mail to the last address known to Defendant  
 3 employer.

4 14. Attached hereto as Exhibit "A" is Plaintiff's signed consent to the filing of  
 5 the FLSA claims alleged herein on his behalf against Defendant. Plaintiff is informed  
 6 and believes and thereon alleges that a great many of the FLSA Collective Plaintiffs will  
 7 sign and file such consents.

### 8 9 CALIFORNIA CLASS ACTION ALLEGATIONS

10 15. Plaintiff brings the California law claims for relief on behalf of himself and  
 11 all other similarly situated persons as a class action pursuant to Rule 23 of the Federal  
 12 Rules of Civil Procedure. The members of the California Class belong to one or two  
 13 classes defined as follows:

14 **California Hourly Paid Employee Class:** All persons who have been, are,  
 15 or will be employed by Defendants in any hourly paid position or positions  
 16 in California at any time during the period beginning October 8, 2005 and  
 17 ending on the date notice of Class certification is mailed to the Class (the  
 18 "California Class Period"), whether they are still employed by Defendant or  
 19 not, whose time records and pay records as employees of Defendants reflect  
 20 a practice of Defendants to "round" time records, and pay such employees  
 21 on the basis of the rounded time. This Class includes a sub-class of former  
 22 California Hourly Paid Employees.

23 **California Former Employee Class:** All persons employed by Defendant  
 24 in any or position whose employment in California ended at any time during  
 25 the period October 8, 2005 through the date Notice of Class certification is  
 26 mailed to the Class who received a payment of wages by check, direct  
 27 deposit, or other means, dated, per company records, after the last day, per  
 28 company records, of their employment.

16. Plaintiff reserves the right to amend or modify the California Class  
 descriptions with greater specificity, by further division into subclasses, or by limitation  
 to particular issues.

17. Plaintiff and California Class members are covered under California  
 Industrial Welfare Commission Wage Order 1-2001 regulating wages, hours, and

1 working conditions in the manufacturing industry.

2 18. The California Class claims have been brought and may be maintained as a  
3 class action pursuant to Rule 23(a) of the Federal Rules of Civil Procedure because there  
4 is a well-defined *community of interest* among many persons who comprise a *readily*  
5 *ascertainable* Class:

6 a. **Numerosity.** The Class members are so numerous that the individual  
7 joinder of all of them as plaintiffs is impracticable. While the exact number of Class  
8 members is unknown to Plaintiff at this time, Plaintiff is informed and believes and  
9 thereon alleges that there are more than 500 Class members. Therefore, joinder of all  
10 Class members as individual plaintiffs is impracticable.

11 b. **Common Questions Predominate.** Common questions of law and fact  
12 exist as to members of the Class and predominate over any questions which affect only  
13 individual members of the Class. These common questions include, but are not limited  
14 to:

- 15 (1) Are Defendants subject to Industrial Welfare Commission Wage  
16 Orders and other California laws regulating wages, hours, and  
17 working conditions of Plaintiff and California Class Members?
- 18 (2) Did Defendants violate Labor Code § 1197 by not paying California  
19 Hourly Paid Employee Class members minimum wages for all time  
20 worked?
- 21 (3) Did Defendants violate California Labor Code § 201 or 202 by not  
22 paying California Former Employee Class members all wages owed  
23 to them upon separation from employment in a timely manner?
- 24 (4) Are Defendants liable to members of the California Former Employee  
25 Class for continuation wages under California Labor Code § 203?
- 26 (5) Are Defendants liable to members of the California Hourly Paid  
27 Employee Class who are no longer employed?
- 28

- 1 (6) What customs, policies, programs, practices, procedures, protocols,  
2 routines and rules existed during the California Class Period  
3 regarding the “rounding” of clock hours, and the pay of the California  
4 Class Members?
- 5 (7) Did the customs, policies, programs, practices, procedures, protocols,  
6 routines and rules that existed during the California Class Period  
7 result in or contribute to California Class Members not being properly  
8 paid?
- 9 (8) Did the customs, policies, programs, practices, procedures, protocols,  
10 routines, and rules of Defendants during the Class Period result in  
11 rounding of California Class Members’ time?
- 12 (9) Did Defendants’ custom, policy, program, practice, procedure,  
13 protocol, routine and/or rule during the California Class Period  
14 regarding rounding result in or contribute to Defendants failing to  
15 pay California Hourly Paid Employee Class Members minimum  
16 wages and liquidated damages for all hours worked?
- 17 (10) What customs, policies, programs, practices, procedures, protocols,  
18 routines, and rules of Defendants existed during the California Class  
19 Period regarding the preparation and furnishing of itemized  
20 statements required by California Labor Code § 226 to the California  
21 Hourly Paid Employee Class Members upon each payment of wages?
- 22 (11) Did the customs, policies, programs, practices, procedures, protocols,  
23 routines, and rules of Defendants that existed during the California  
24 Class Period result in, or contribute to, the failure of Defendants to  
25 pay to California Former Employee Class Members in full, the  
26 amounts due within the time required by law upon them quitting or  
27 being discharged?  
28

- 1 (12) Did the customs, policies, programs, practices, procedures, protocols,  
2 routines, and rules of Defendants that existed during the California  
3 Class Period result in, or contribute to, the failure of Defendants to  
4 furnish accurate itemized statements required by California Labor  
5 Code § 226 to the California Hourly Paid Employee Class Members  
6 upon each payment of wages?
- 7 (13) Did the customs, policies, programs, practices, procedures, protocols,  
8 routines, and rules of Defendants that existed during the California  
9 Class Period result in, or contribute to, the commission by Defendants  
10 of unlawful business practices within the meaning of California  
11 Business & Professions Code §§ 17200 *et. seq.*
- 12 (14) Did the customs, policies, programs, practices, procedures, protocols,  
13 routines, and rules of Defendants that existed during the California  
14 Class Period result in, or contribute to, the commission by Defendants  
15 of deceptive business practices within the meaning of California  
16 Business & Professions Code §§ 17200 *et. seq.*
- 17 (15) Did the customs, policies, programs, practices, procedures, protocols,  
18 routines, and rules of Defendant that existed during the California  
19 Class Period result in, or contribute to, the commission by Defendants  
20 of unfair business practices within the meaning of California Business  
21 & Professions Code §§ 17200 *et. seq.*
- 22 (16) Are Defendants liable to Class members for restitution under  
23 Business and Professions Code § 17203?

24 c. **Typicality.** Plaintiff is a member of the California Class, and his claims  
25 are typical of the claims of the other California Class members. Plaintiff is informed and  
26 believes and thereon alleges that Defendants have a policy and/or practice of:

- 27 (1) rounding hourly paid employees' time, which results in paying employees for less  
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1 hours worked than reflected on their time records; (2) not timely paying hourly paid  
2 employees all wages owed at the end of their employment; and (3) not providing  
3 accurate wage statements to hourly paid employees. Plaintiff and California Class  
4 members have suffered the same or similar injuries and damages arising out of and  
5 caused by Defendants' common course of conduct in violation of laws, regulations that  
6 have the force and effect of law, and statutes as alleged herein. Defendants' conduct is  
7 not unique to Plaintiff, but has commonly affected the other California Class members.

8 d. **Adequacy.** Plaintiff will adequately and fairly protect the interests of the  
9 members of the Class. Plaintiff has no interest adverse to the interests of absent  
10 California Class members and will vigorously prosecute this action on behalf of other  
11 California Class members. Plaintiff is represented by legal counsel who has substantial  
12 class action experience in civil litigation and employment law.

13 e. **Superiority.** A class action is superior to other available means for fair and  
14 efficient adjudication of the claims of the California Class and would be beneficial for  
15 the parties and the Court. Individual joinder of all California Class members is  
16 impractical. Class action treatment will allow a large number of similarly situated  
17 persons to prosecute their common claims in a single forum, simultaneously, efficiently,  
18 and without the unnecessary duplication of effort and expense that numerous individual  
19 actions would require. Further, the monetary amounts due to many individual California  
20 Class Members are likely to be relatively small in the sense of class action jurisprudence.  
21 The burden and expense of individual litigation would make it difficult or impossible for  
22 individual members of the California Class to seek and obtain relief. A class action will  
23 serve an important public interest by permitting such individuals to effectively pursue  
24 recovery of the sums owed to them. Defendants' unlawful payment practices constitute  
25 conduct common to all Class members. Prosecution of separate actions by individual  
26 Class members would create a risk of adjudications with respect to individual members  
27 of the Class which would, as a practical matter, be dispositive of the interests of other  
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1 members not parties to the adjudication. Class litigation prevents the potential for  
2 inconsistent or contradictory judgments raised by individual litigation. Plaintiff is not  
3 aware of any difficulties that are likely to be encountered in the management of this  
4 action that would preclude its maintenance as a class action.

5  
6 **FIRST CLAIM FOR RELIEF**

7 **FLSA OVERTIME VIOLATIONS**

8 **(By Plaintiff and the FLSA Collective Plaintiffs Against All Defendants)**

9 19. Plaintiff incorporate paragraphs 1 through 14 above.

10 20. At all relevant times, each Defendant has been, and continues to be,  
11 an “employer” engaged in interstate “commerce” within the meaning of the FLSA,  
12 29 U.S.C. § 203. At all relevant times, each Defendant has employed, and continues to  
13 employ Plaintiff and members of the FLSA Collective Plaintiffs as “employee[s]” within  
14 the meaning of the FLSA. At all relevant times, each Defendant has had gross operating  
15 revenues in excess of \$500,000.

16 21. Throughout the FLSA Collective Plaintiffs Period, plaintiffs and FLSA  
17 Collective Plaintiffs often worked in excess of forty (40) hours per workweek, and  
18 continue to do so.

19 22. Plaintiff is informed and believes and thereon alleges that at all relevant  
20 times within the applicable limitations period, Defendants maintained common policies,  
21 programs, practices, procedures, protocols, routines, and rules of willfully rounding its  
22 hourly paid employees’ time, which resulted in Defendants paying their hourly paid  
23 employees for less time worked than reflected on their time records.

24 23. Plaintiff is informed and believes and thereon alleges that at all relevant  
25 times, each Defendant has had, and continues to have common rounding policies,  
26 programs, practices, procedures, protocols, routines, and rules through which it willfully  
27 failed and refused to pay Plaintiff and members of the FLSA Collective Plaintiffs for  
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1 their actual time worked in excess of forty (40) hours per workweek at a rate of time and  
2 one half their regular rate.

3 24. As a result of Defendants' unlawful conduct, Plaintiff and members of the  
4 FLSA Collective Plaintiffs have suffered damages in an amount, subject to proof, to the  
5 extent they were not paid for all overtime wages earned. The total amount of unpaid  
6 overtime wages and other damages owing to Plaintiff and FLSA Collective Plaintiffs is  
7 not presently known by Plaintiff, but can readily be determined from employment  
8 records maintained by Defendants.

9 25. Plaintiff and FLSA Collective Plaintiffs seek damages in the amount of their  
10 respective unpaid overtime compensation, liquidated (double) damages as provided by  
11 the FLSA for overtime wage violations, attorneys' fees and costs, injunctive relief  
12 requiring Defendants to cease and desist from their violations of the FLSA described  
13 herein, pre-judgment interest, and such other legal and equitable relief as the Court  
14 deems just and proper.

## 15 16 **SECOND CLAIM FOR RELIEF**

### 17 **FAILURE TO PAY MINIMUM WAGES**

18 **( Labor Code §§ 1194, 1194.2, 1197, 1197.1)**

19 **(By Plaintiff and the California Hourly Paid Employee Class**

20 **Against all Defendants)**

21 26. Plaintiff incorporates paragraphs 1 through 11 and 15 through 18 as though  
22 fully set forth herein.

23 27. At all relevant times, Plaintiff and other members of the California Hourly  
24 Paid Employee Class were employees of Defendant covered by California Labor Code  
25 §§ 1194, 1194.2, 1197, and 1197.1, Wage Order 1-2001, and Wage Order MW-2001.

26 28. Pursuant to California Labor Code §§ 1194, 1194.2 and 1197, it is  
27 unlawful for an employer to suffer or permit a California employee to work without  
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1 paying wages at the proper minimum wage for all time worked, as required by the  
2 applicable IWC Wage Order, here Wage Order 1-2001 and Wage Order MW-2001).

3 29. Pursuant to IWC Wage Order No. 1, at all times material hereto “hours  
4 worked” includes “the time during which an employee is subject to the control of an  
5 employer, and includes all the time the employee is suffered or permitted to work,  
6 whether or not required to do so.”

7 30. Plaintiff and all the other California Class Members were suffered and  
8 permitted, at times when they were subject to Defendants’ control, to perform work for  
9 which they received no pay, pursuant to Defendants’ rounding practices.

10 31. Pursuant to Labor Code § 1197, Wage Order 1-2001, and Wage  
11 Order MW -2001, Plaintiff and other members of the California Hourly Paid Employee  
12 Class were entitled to receive minimum wages for such hours worked.

13 32. Defendants willfully failed and refused, and continue to willfully fail and  
14 refuse, to pay Plaintiff and other members of the California Hourly Paid Employee Class  
15 for all hours worked in violation of Labor Code § 1197, Wage Order 1-2001, and Wage  
16 Order MW-2001. Plaintiff is informed and believes and thereon alleges that at all  
17 relevant times within the applicable limitations period, Defendant maintained a policy or  
18 practice of rounding hourly paid employees’ time, which results in Defendants paying its  
19 hourly paid employees for less time worked than reflected on their time records.

20 33. As a result of Defendants’ unlawful conduct, Plaintiff and other members  
21 of the California Hourly Paid Employee Class have suffered damages in an amount,  
22 according to proof, to the extent they were not paid minimum wages for all hours  
23 actually worked. The total amount of unpaid minimum wages owing to Plaintiff and  
24 California Hourly Paid Employee Class members is not presently known by Plaintiff, but  
25 can be determined from employment records maintained by Defendants.

26 34. Pursuant to Labor Code § 1194.2(a), if an employer fails to pay  
27 minimum wages, the employer is liable for the unpaid minimum wages and additional  
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1 liquidated damages in an amount equal to the unpaid wages, for a total of twice the  
2 unpaid minimum wages and interest thereon.

3 35. Pursuant to California Labor Code §§ 1194, 1194.2, 1197 and  
4 1197.1, Plaintiff and other members of the California Hourly Paid Employee Class are  
5 entitled to recover the full amount of unpaid minimum wages, and liquidated damages in  
6 an amount equal to the unpaid wages, and interest thereon, and civil penalties according  
7 to proof.

8 36. Pursuant to Labor Code § 1194, and pursuant to Code of Civil Procedure  
9 § 1021.5, Plaintiff and the California Hourly Paid Employee Class are also entitled to  
10 their attorneys' fees, costs and interest according to proof.

### 11 **THIRD CLAIM FOR RELIEF**

#### 12 **FAILURE TO FURNISH ITEMIZED WAGE STATEMENTS**

#### 13 **(Labor Code § 226)**

#### 14 **(By Plaintiff and the California Hourly Paid Employee Class Against all** 15 **Defendants)**

16 37. Plaintiff incorporates paragraphs 1 through 11 and 15 through 18 as though  
17 fully set forth herein.

18 38. Labor Code § 226(a) sets forth reporting requirements for employers when  
19 they pay wages: "Every employer shall ... at the time of each payment of wages, furnish  
20 each of his or her employees ... an itemized statement in writing showing (1) gross  
21 wages earned, (2) total hours worked by the employee ... (5) net wages earned ... and  
22 (9) all applicable hourly rates in effect during the pay period and the corresponding  
23 number of hours worked at each hourly rate by the employee." § (e) provides: "An  
24 employee suffering injury as a result of a knowing and intentional failure by an employer  
25 to comply with subdivision (a) is entitled to recover the greater of all actual damages or  
26 fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred  
27  
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dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000) per employee, and is entitled to an award of costs and reasonable attorney's fees."

39. Throughout the period applicable to this cause of action, Defendants knowingly and intentionally failed to furnish, and continue to knowingly and intentionally fail to furnish, to Plaintiff and other California Class members, upon each payment of wages, itemized statements accurately showing the required information, including but not limited to the total number of actual hours worked.

40. Plaintiff and the other California Class members suffered injury by these failures because, among other things, the failures led them to believe that they were being paid for all hours actually worked at the correct rates, and because these wage statement failures prevented and will prevent them from determining the true amounts of wages owed to them, and caused them, and will cause them, extra work and effort to determine their true wages.

41. Plaintiff and the other California Hourly Paid Class members are entitled to the amounts provided for in Labor Code § 226(e), plus costs and attorneys' fees.

#### **FOURTH CLAIM FOR RELIEF**

#### **FAILURE TO PAY WAGES TIMELY UPON TERMINATION**

#### **(Labor Code § 203)**

#### **(By Plaintiff And The California Former Employee Class**

#### **Against All Defendants)**

42. Plaintiff incorporates paragraphs 1 through 11 and 15 through 18 as though fully set forth herein.

43. Plaintiff and the other California Former Employee Class members quit or were discharged by Defendants within the statute of limitations applicable to this cause of action.

1           44. Pursuant to Labor Code §§ 201 and 202, Plaintiff and members of the  
2 California Former Employee Class were entitled, upon the end of their employment with  
3 Defendants, to timely payment of their final wages (i.e., all wages earned and unpaid  
4 prior to termination). Discharged employees were entitled to payment of final wages  
5 immediately upon termination. Employees who resigned were entitled to payment of  
6 final wages within 72 hours after resignation or, if they gave at least 72 hours previous  
7 notice, they were entitled to payment of all final wages at the time of resignation.

8           45. Defendants paid members of the California Former Employee Class wages  
9 untimely, after the end of their employment by Defendants. Plaintiff is informed and  
10 believes and thereon alleges that at all relevant times within the applicable limitations  
11 period, Defendants maintained a custom, policy, practice, procedure, protocol, routine or  
12 rule of paying terminated employees wages owed to them after their separation from  
13 employment without regard for the time payment was due under Labor Code §§ 201 and  
14 202.

15           46. Defendants' failure to pay Plaintiff and members of the California Former  
16 Employee Class all wages earned prior to separation from employment in accordance  
17 with Labor Code §§ 201 and 202 was willful within the meaning of Labor Code § 203.  
18 Defendants had the ability to pay final wages in accordance with Labor Code §§ 201 and  
19 202 but maintained customs, policies, practices, procedures, protocols, routines or rules  
20 that were and are incompatible with the requirements of Labor Code §§ 201 and 202.

21           47. Pursuant to Labor Code § 203, Plaintiff and members of the California  
22 Former Employee Class are entitled to continuation of their wages from the day their  
23 earned and unpaid wages were due upon separation, until the day they were paid, up to a  
24 maximum of 30 days.

25           48. As a result of Defendants' conduct, Plaintiff and members of the California  
26 Former Employee Class have suffered damages in an amount, subject to proof, to the  
27 extent they were not paid all continuation wages owed under Labor Code § 203. The  
28

total amount of continuation wages owing to Plaintiff and members of the California Former Employee Class is not presently known to Plaintiff, but can be determined from employment records maintained by Defendants.

49. Pursuant to Labor Code §§ 218 and 218.5, Plaintiff and members of the California Former Employee Class are entitled to recover the full amount of their continuation wages under Labor Code § 203, reasonable attorney's fees, and costs of suit. Plaintiff and members of the California Former Employee Class are entitled to recover interest on all due and unpaid wages and continuation wages under Labor Code § 218.6 and Civil Code § 3287(a).

### **FIFTH CLAIM FOR RELIEF**

#### **FAILURE TO PAY WAGES TIMELY UPON TERMINATION**

##### **(Labor Code § 203)**

##### **(By Plaintiff And The California Hourly Employee**

##### **Class Whose Employment By Defendants Has Ended Against All Defendants)**

50. Plaintiff incorporates paragraphs 1 through 11 and 15 through 18 as though fully set forth herein.

51. This Claim for Relief is on behalf of members of the California Hourly Paid Employee Class who at the time Notice is mailed to the Class of Certification are no longer employed by Defendants.

52. Pursuant to Labor Code §§ 201 and 202, Plaintiff and members of the California Hourly Paid Employee Class no longer employed by Defendants were entitled, upon the end of their employment with Defendant, to timely payment of their final wages (i.e., all wages earned and unpaid prior to termination). Discharged employees were entitled to payment of final wages immediately upon termination. Employees who resigned were entitled to payment of final wages within 72 hours after resignation or, if they gave at least 72 hours previous notice, they were entitled to

1 payment of all final wages at the time of resignation.

2 53. Defendants failed to pay California Hourly Paid Employee Class members  
3 no longer employed by Defendants, without abatement, all the wages due upon  
4 separation from employment within the time periods provided in Labor Code § § 201  
5 and 202 by failing to pay them the wages owed to them as a consequence of Defendants  
6 rounding practices.

7 54. Defendant's failure to pay Plaintiff and members of the California Hourly  
8 Paid Employee Class no longer employed by Defendants all wages earned prior to  
9 separation from employment in accordance with Labor Code §§ 201 and 202 was willful  
10 within the meaning of Labor Code § 203. Defendants had the ability to pay final wages  
11 in accordance with Labor Code §§ 201 and 202 but maintained customs, policies,  
12 practices, procedures, protocols, routines or rules that were and are incompatible with the  
13 requirements of Labor Code §§ 201 and 202.

14 55. Pursuant to Labor Code § 203, Plaintiff and members of the California  
15 Hourly Paid Employee Class no longer employed by Defendants are entitled to  
16 continuation of their wages from the day their earned and unpaid wages were due upon  
17 separation, until up to a maximum of 30 days.

18 56. As a result of Defendants' conduct, Plaintiff and members of the California  
19 Hourly Paid Employee Class no longer employed by Defendants have suffered damages  
20 in an amount, subject to proof, to the extent they were not paid all continuation wages  
21 owed under Labor Code § 203. The total amount of continuation wages owing to  
22 Plaintiff and members of the California Hourly Paid Employee Class who are no longer  
23 employed by Defendants is not presently known to Plaintiff, but can be determined from  
24 employment records maintained by Defendants. A Class member's combined  
25 continuation wages recovery from this Cause of Action and the Fourth Cause of Action  
26 cannot exceed thirty (30) days of pay.

27 //

57. Pursuant to Labor Code §§ 218 and 218.5, Plaintiff and members of the California Hourly Paid Employee Class no longer employed by Defendants are entitled to recover the full amount of their continuation wages under Labor Code § 203, reasonable attorney's fees, and costs of suit. Plaintiff and members of the California Hourly Paid Employee Class no longer employed by Defendants are entitled to recover interest on all due and unpaid wages and continuation wages under Labor Code § 218.6 and Civil Code § 3287(a).

## **SIXTH CLAIM FOR RELIEF**

### **UNFAIR COMPETITION**

#### **(By Plaintiff and All California Classes Against all Defendants)**

58. Plaintiff incorporates all paragraphs above as though fully set forth herein.

59. Plaintiff brings this action on behalf of each and all members of California's general public, California Class Members, FLSA Collective Plaintiffs who worked for Defendants in California during the applicable statute of limitations periods, and Plaintiff himself, pursuant to Business and Professions Code § 17200 *et. seq.*

60. Defendants' conduct alleged above constitutes unlawful, fraudulent, deceptive, and unfair business acts and practices in violation of Business & Professions Code § 17200 *et seq.* Due to their unlawful, fraudulent, deceptive, and unfair business acts and practices in violation of the Fair Labor Standards Act and the California Labor Code, Defendants have gained a competitive advantage over other comparable companies doing business in the State of California that comply with their obligations to pay employees minimum wages, overtime wages, and final wages timely upon termination as required by law.

61. As a result of Defendants' unfair competition as alleged herein, Plaintiff and members of the California Classes have suffered injury in fact and lost money or property. Plaintiff and members of the California Classes were deprived of their rights to

1 minimum wages for all hours worked and overtime wages for all hours worked. Plaintiff  
 2 and members of the California Classes were also deprived of their rights to timely  
 3 payment of final wages in accordance with Labor Code § 201 or 202 and were not paid  
 4 continuation wages owed to them under Labor Code § 203.

5 62. Pursuant to Business and Professions Code § 17200 *et seq.*, Plaintiff and the  
 6 California Class Members are entitled to restitution for at least the following: minimum  
 7 wages, overtime wages, and continuation wages (Labor Code § 203) owed to them but  
 8 unlawfully not paid, withheld and/or retained by Defendants, as described above.

9 63. Plaintiff and the California Class Members and the general public are also  
 10 entitled to permanent injunctive and declaratory relief prohibiting Defendants from  
 11 engaging in the violations and other misconduct referred to above.

12 64. Defendants are also liable to pay attorneys' fees pursuant to Code of Civil  
 13 Procedure § 1021.5, the substantial benefit doctrine, the common fund doctrine or other  
 14 applicable law, and costs.

## 15 PRAYER FOR RELIEF

16 WHEREFORE, Plaintiff for himself and all others on whose behalf this suit is  
 17 brought, prays for relief and judgment against Defendants, jointly and severally, as  
 18 follows, in amounts according to proof (where amounts are sought):  
 19

- 20 A. An order that the California Class be certified;
- 21 B. An order that Plaintiff be appointed representative of the California Class;
- 22 C. An order that counsel for Plaintiff be appointed as counsel for the California  
 23 Class;
- 24 D. An order that the FLSA collective action be certified;
- 25 E. An order that Plaintiff be appointed representative of the FLSA Collective  
 26 Plaintiffs;

- 1 F. Judgment in favor of Plaintiff and the Class and against Defendants;  
2 G. For unpaid wages at overtime rates for all overtime hours worked;  
3 H. For unpaid minimum wages;  
4 I. For the amounts provided in Labor Code § 203 for all California  
5 Former Employee Class Members and all California Hourly Paid Employee  
6 Class Members no longer in Defendants' employ at the time Notice is  
7 mailed to the Class;  
8 J. For the amounts provided for in Labor Code § 226(e);  
9 K. For liquidated damages and penalties;  
10 L. For restitution, injunctive and other relief authorized by Business and  
11 Professions Code §§ 17200 *et seq.*;  
12 M. For injunctive and other relief authorized by the FLSA;  
13 N. Pre-judgment interest;  
14 O. Reasonable attorney's fees under the FLSA, California Labor Code and  
15 other applicable provisions of law outside of the FLSA and Labor Code;  
16 P. Costs of suit; and  
17 Q. Such other relief as required by law, which the Court deems just and proper.

18  
19 DATED: October 8, 2009

By: 

Zorik Mooradian  
Attorneys for Plaintiff  
BENJAMIN GRANADOS

22 **DEMAND FOR JURY TRIAL**

23 Plaintiff demands a trial by jury for himself and the Class to the full extent  
24 permitted by law.

25  
26 DATED: October 8, 2009

By: 

Zorik Mooradian  
Attorneys for Plaintiff  
BENJAMIN GRANADOS

# EXHIBIT A

**FLSA CONSENT**

I, Benjamin Granados consent to the filing of a Fair Labor Standards Act case/claim on my behalf in either state or federal court against Bimbo Bakeries USA and/or any affiliated "Employers".

8/26/09  
Date

Benjamin  
Benjamin Granados